

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CR.R. No. 1357 of 2019**

1. Smt. Kanti Kashyap W/o Mani Ram Kashyap Aged About 33 Years
2. Suman Kashyap S/o Mani Ram Kashyap Aged About 10 Years Minor Through Natural Guardian Mother Smt. Kanti Kashyap, caste Kurmi

Both R/o Kataud, Police Station And Tahsil Navagarh, District Janjgir-Champa, CG

----Applicants**Versus**

Maniram Kashyap S/o Sitram Aged About 46 Years Caste Kurmi R/o Village Kukda, Tahsil Navagarh, Police Station Shivrinarayan, District Janjgir-Champa, CG

----Non-applicant

 For Applicants : Shri Vivek Singhal, Adv.
 For non-applicant : Shri Ravindra Sharma, Adv.

Hon'ble Shri Justice N.K. Chandravanshi**Order on Board****22-9-2021**

1. This criminal revision has been preferred by the applicant against the order dated 28-8-2019 passed by the Judge, Family Court, Janjgir, in Misc. Criminal Case No. 67/2019 whereby the application filed by the applicants under Section 125 (3) of the Criminal Procedure Code, 1973 (in short, 'Cr.P.C.') has been dismissed.

2. Learned counsel for the applicants submits that the applicants had filed an application under Section 125 of the Cr.P.C. registered as Misc. Cr. Case No. 126/2017, in which order dated 8-12-2018 has been passed. He further submits that in that case, interim maintenance was granted in favour of applicants vide order dated 19-1-2018, but non-applicant has not paid interim maintenance from 19-1-2018 to 8-12-2018 i.e. total Rs. 33,000/-. Non-applicant has also not paid maintenance amount from final order dated 8-12-2018 to 8-3-2019 which is Rs. 6,000/-, meaning thereby, total Rs. 39,000/- is recoverable from the non-applicant/husband. Therefore, the applicants filed

application under Section 125(3) of the Cr.P.C. which has been dismissed by the trial Court mentioning that there is no provision in Section 125(3) of the Cr.P.C. to file application for recovery of amount of interim maintenance and also held that applicants have filed aforesaid applications after one year, therefore, it is barred by limitation and dismissed the application which is erroneous, illegal and not sustainable, because as per first proviso of sub-section (3) of Section 125 of the Cr.P.C., application for recovery of maintenance amount can be filed within a period of one year from the date on which it becomes due. Thus, application was well within purview of aforesaid provision which ought to have been allowed by learned Family Court. Therefore, he prays to allow the revision petition.

3. Per contra, learned counsel for the non-applicant supports the impugned order.

4. I have heard learned counsel for both the parties and perused the documents filed with the revision petition as well as the order impugned.

5. Sub-section (2) and first proviso of sub-section (3) of Section 125 of the Cr.P.C. reads thus :-

“125. Order for maintenance of wives, children and parents.-

(1) xxx xxx xxx

(2) Any such allowance for the maintenance or interim maintenance and expenses of proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.]

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant

for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due: ...”

6. Reading of aforesaid provisions clearly shows that provision of maintenance or interim maintenance has been enumerated in sub-section (2), whereas provision/procedure regarding compliance of the order has been provided in sub-section (3), command of language used in sub-section (3) i.e. **“if any person so ordered fails without any sufficient reason cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines.....,”** clearly shows that if order to pay maintenance or interim maintenance is granted and the person so ordered fails to comply with the order without sufficient cause, then magistrate may order as per sub-section (3) of the Cr.P.C. and other relevant provisions. Therefore, observation made by learned Court below that there is no provision in Section 125(3) of the Cr.P.C. to file application for recovery of interim maintenance amount is totally erroneous and illegal, rather, on the basis of application filed by applicant under Section 125(3) of the Cr.P.C., learned Court below ought to have proceeded as per provisions

enumerated in sub-section (3) of Section 125 of the Cr.P.C. and other relevant provisions.

7. So far as observation made by learned trial Court that the application filed by the applicants is barred by limitation, is concerned, it is also not in accordance with law, because as per first proviso of sub-section (3) of Section 125 of Cr.P.C., application for recovery of maintenance / interim maintenance amount could be filed ***within a period of one year from the date on which it becomes due***. In other words, applicants filed aforesaid application on 18-3-2019, therefore, they may recover amount of maintenance/interim maintenance one year before filing of application i.e. from March- April, 2018. Thus, the finding given by the Court below that the application filed by the applicants is barred by limitation, is also perverse and against the law.

8. In view of aforesaid discussion, the order dated 28-8-2019 passed by learned Judge, Family Court is set aside and the case is remanded back to the Judge, Family Court, Janjgir with a direction that application filed by the applicants under Section 125(3) of the Cr.P.C. be restored in its original number, considered and decided as per provisions of Section 125 and other provisions of Chapter IX of the Cr.P.C. by observing those provisions sincerely and also taking into account the purpose of constitution of family courts.

9. Instant revision is accordingly disposed of.

Sd/-

N.K. Chandravanshi
Judge